IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6592 OF 2005

Pradeep Pushpakant Goragandhi. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Shri A.H.H.Ponda for the Applicant.

Ms.M.H.Mhatre, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 5th October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. An application was made by the Applicant before the Sessions Court for grant of anticipatory bail. By order dated 3rd October 2005, the learned Additional Sessions Judge rejected the prayer for ad-interim anticipatory bail. While rejecting the said prayer, the learned Judge observed that there is no C.R. registered against the Applicant. He has also observed that the commission of breach of conditions imposed by MHADA does not come within the purview of section 420 or section 406 of the Indian Penal Code. After making this observation, the learned Judge rejected the prayer for ad-interim anticipatory bail.

3. This Court has already taken a view that if the

learned Sessions Judge is not inclined to grant ad-interim relief pending the application for anticipatory bail, the proper course will be to reject the application for anticipatory bail. This Court has already deprecated the practice of rejecting the prayer for ad-interim relief made in the application for anticipatory bail and keeping the main application for anticipatory bail pending.

4. The learned A.P.P. on instructions of the Investigating officer stated that as of today no offence has been registered against the Applicant. The report dated 3rd October 2005 submitted by the Investigating Officer does not disclose commission of any offence by the Applicant in immediate past. In fact, a reference has been given in the said report to the events of 1993, 1998 and 1999. The allegation in the report is that the Applicant has committed breach of the undertaking dated 15th July 1993 given by him to MHADA and he has committed breach of the conditions incorporated in the no objection certificate. Considering the assertions made in the said report and considering the fact that no case has been registered against the Applicant, in my view this is a fit case where the Respondent should be directed to give 72 hours advance notice to the Applicant in the event the Applicant is required to be arrested.

5. Hence the following order is passed:

i) In the event the Respondent desires to arrest the Applicant in connection with the complaint made by the Maharashtra Housing and Area Development Authority in respect of breach of undertaking or any breach of conditions of the No Objection Certificate granted for re-development of "Goragandhi Palace" situated at Khetwadi Back Road, Girgaon, Mumbai 400 004, the Applicant will be given 72 hours prior notice.

ii) It is obvious that if such a notice is given, the Applicant will be entitled to apply for anticipatory bail before the appropriate Court.

iii) The Application made by the Applicant bearing No.1296 of 2005 pending before the Sessions Court is also stand disposed of by this order.

iv) The parties to act on an authenticated copy of this order.

Judge.